

JOAQUIN A. ELEAZAR, PLAINTIFF AND APPELLEE, VS. GONZALO ABAYA AND SEGUNDA ABELLA, DEFENDANTS AND APPELLANTS.

G. R. No. 34187. September 07, 1931

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by Gonzalo Abaya and Segunda Abella from the judgment of the Court of First Instance of Laguna, the dispositive part of which is as follows:

"The court finds the complaint borne out by the evidence and sentences the defendants Gonzalo Abaya and Segunda Abella to pay the plaintiff, within three months, the sum of eight thousand one hundred thirteen pesos and seventy-seven centavos (P8,113.77), with interest at five per centum from February 21, 1929, plus an additional sum of one thousand three hundred pesos (P1,300) as attorney's fees, and in default thereof, it is ordered that the mortgaged property described in Exhibit D be sold, subject to the rights of the creditors Rosendo R. Llamas and Calixto R. Llamas, as holders of the first mortgage, and to pay the costs hereof. So ordered."

In support of their appeal, the appellants assign the following alleged errors as committed by the court below in its judgment, to wit:

- The lower court erred in not finding that the deeds of sale with pacto de retro, Exhibits 1 and 2 Abaya, were really contracts of loan secured by mortgages on real property.
- The lower court erred in not finding that the contracts of loan between the plaintiff and the defendant Gonzalo Abaya on December 5, 1921 and September 10, 1923, guaranteed by the defendant and his wife, were usurious loans.
- The lower court erred in not absolving the defendant Gonzalo Abaya from the plaintiff's complaint, and in not sentencing the latter to pay him one thousand pesos as attorney's fees, together with the costs of the trial.
- The lower court erred in finding that the preponderance of the evidence was in favor of the plaintiff.
- The lower court erred in denying the motion for a new trial filed by the defendants Gonzalo Abaya and Segunda Abella."

This action was instituted by Joaquin A. Eleazar against Gonzalo Abaya and Segunda Abella, praying that they be sentenced to pay him the sum of P8,113.77, which is the unpaid balance of a mortgage credit in the amount of P10,220.15 plus the sum of P1,300 as attorney's fees, and that they be ordered to deposit said sum in court within three months from the date of the judgment, or, in default thereof, that a writ of execution be issued against the mortgaged property.

The defendants, answering the complaint, denied each and every one of the allegations therein, with the exception of those contained in paragraph I, and by way of special defense they alleged that the contract was usurious and prayed that it be declared null and void, together with the other contracts from which it was derived, absolving

said defendants, with costs against the plaintiff.

The relevant facts necessary to decide the questions raised in the appeal, as established by a preponderance of the evidence, are as follows:

In the month of June, 1919, Gonzalo Abaya and his wife Segunda Abella, being in urgent need of money, appealed to the plaintiff Joaquin A. Eleazar for a loan of P4,000. As the lands offered in security were not registered, the plaintiff refused to furnish the money unless they sold those lands to him subject to repurchase. The deed Exhibit A was drawn up accordingly, reserving to the vendors the right to repurchase the lands sold within the period of one year from June 12, 1919, the date of the deed, and stipulating therein that the vendors should continue in possession of the property sold; it was further agreed orally that they should pay a monthly rent of P40, which was faithfully paid to the plaintiff (Exhibit A). Ten months after the contract took effect, the defendants repurchased the property, and in April, 1920, the plaintiff made out a deed of repurchase in their name. On June 25, 1920, the defendants being again in urgent need of money, obtained a new loan of P4,000 from the plaintiff, upon the same condition of a sale subject to repurchase. They made out a new deed of sale (Exhibit B) reserving to themselves the right to repurchase the lands sold within the period of six months, and to remain in possession, paying a monthly rental of P40. When this six-month term had almost expired, Gonzalo Abaya, being in no position to make the repurchase, appealed to Joaquin A. Eleazar for an extension of one year, which was granted him, and endorsed upon Exhibit B. When the year's extension was about to expire, Gonzalo Abaya, being again in financial straits, instead of repurchasing the lands sold under the deed Exhibit B, requested an additional loan of P2,000 which was granted him by Joaquin A. Eleazar; whereupon the mortgage deed Exhibit C was executed on December 5, 1921, for the sum of P6,000 for a period of five years at 10 per cent per annum, the interest for said five years being calculated at P3,000, which added to the principal of P6,000, made a total of P9,000, as stated in said deed (Exhibit C), where it was stipulated that the mortgagors should pay a fixed monthly sum of P150, of which P100 would be applied to the principal of P6,000 and the remaining P50, to the P3,000 calculated interest. Up to the month of December, 1922, the defendants punctually paid the monthly amount to be applied to the principal and interest. About that date Gonzalo Abaya begged the plaintiff to reduce the monthly payments to P75, of which P25 should be applied to the principal, and P50 to the interest, in view of the fact that he had punctually fulfilled his obligation until the month of June, 1923. In July, 1923, Gonzalo Abaya was again in need of money, and approached the plaintiff for a loan of P5,000. As Joaquin A. Eleazar did not have that amount at the time, he went to his father-in-law, Vicente Reyes who gave it to him and he turned it over to the defendant Gonzalo Abaya, in evidence whereof the deed Exhibit D was executed. Inasmuch as the defendants had already paid P1,350 on account of the principal of P6,000 and P950 on account of the P3,000 interest under the deed Exhibit C, it left P4,650 as principal and P2,050 as interest, and to this balance was added P5,570.15, the amount of the new loan to Gonzalo Abaya, making a grand total of P10,220.15, as noted in said deed Exhibit D, as the principal payable in eight years, with interest at 5 per cent per annum, payable in ninety-six monthly installments counted from September 10, 1923, at the rate of P106.46 monthly to be applied on the principal and P42.58 monthly on the interest. Up to the month of October, 1928, the defendants only made forty-eight payments amounting to P3,582.22 on account of the principal, and P2,612.22 on account of the interest, leaving a balance of P8,113.77 against the defendants in favor of the plaintiff, which the latter seeks to recover through this complaint.

With regard to the first assignment of error, even considering the plaintiff's Exhibits A and B and the defendants' Exhibits 1 and 2, as mortgage contracts under the guise of sales subject to repurchase, and the P40 agreed upon by way of monthly rental, as interest, such contracts would not be usurious, for the reason that the rate of yearly interest would not exceed 12 per centum, and that the payment of interest in advance does not render such interest usurious. (Lopez and Javelona vs. El Hogar Filipino, 47 Phil., 249.)

As to the second assignment of error, while it is true that due to the stipulated manner of paying of the principal and the interest by fixed monthly payments for a certain number of months, the time would arrive when, owing to the gradual decrease of the principal, the interest to be paid would be usurious, it is also true that the defendants

paid neither punctually nor fully, according to the agreement, but only P1,350 on account of the P6,000 principal, and P950 on account of the interest due from December, 1921, to June, 1923, under the deed Exhibit C, and P3,582.22 on account of the P10,220.15 principal, and P2,612.22 on account of the interest from September, 1923, until the month of October, 1928, under the deed Exhibit D, and taking the average interest collected during the time the defendants were paying under each contract, and applying the rule given in *Lopez and Javelona vs. El Hogar Filipino*, supra, the plaintiff did not at any time collect usurious interest.

In view of the premises, the judgment appealed from is modified so that the 5 per centannual interest shall be computed from September 11, 1931, and in all other respects it is affirmed, with costs against the appellants.[1] So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, Romualdez, and Imperial, JJ., concur.

[1] Paragraph corrected in pursuance of a resolution of the Supreme Court of October 14, 1931.

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